

Domenica, 29 agosto 1999

Presiede:

Lucio BIANCO

*(Presidente del Consiglio Nazionale delle Ricerche;
Ordinario di Ricerca Operativa nell'Università Tor Vergata di Roma)*

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PRESENTAZIONE DELL'INCONTRO

Dò il benvenuto a tutti i partecipanti. Ovviamente il mio primo ringraziamento è rivolto ai Relatori che – con estrema affettuosità – si sono assunti l'onere di preparare le relazioni per questo Incontro, ai Presidenti di sessione e, non ultimo, al Magnifico Rettore dell'Università di Messina, per essere presente.

Con l'Incontro di quest'oggi si ripete un'esperienza che ha lo scopo, da un lato, di dare il necessario supporto didattico ai dottorandi di ricerca, perché è a loro che, in primis, è destinata l'iniziativa e, dall'altro lato, di creare un collegamento tra il mondo scientifico e la realtà operativa. Infatti è mia convinzione che la ricerca astratta ha una sua funzionalità in altre materie, ma nella nostra ha bisogno di essere coniugata con le esigenze dell'economia del Paese.

Negli anni passati ci siamo occupati di temi quali la logistica, le assicurazioni trasporti, il trasporto ferroviario. Quest'anno - e su questo non mi soffermo perché il prof. Bianco, Presidente del CNR, è molto più qualificato di me per parlarne - abbiamo dedicato l'Incontro al trasporto aereo, settore che è completamente cambiato. Quattro anni fa abbiamo organizzato un altro Convegno su questo stesso tema, ma bisogna riconoscere che lo scenario è ora totalmente mutato.

Non vi è dubbio che il trasporto aereo è fondamentale per l'economia nazionale, ma sono numerose – e coloro che sono giunti in questa sede in aereo hanno avuto modo di rendersene conto –

le disfunzioni che attualmente affliggono questa modalità di trasporto. Speriamo che, anche col supporto che viene dato dal mondo scientifico, questi problemi si avviino in tempi brevi ad essere superati.

E chiudo: il mio, infatti, vuol essere solo un sentito grazie, rinnovato a tutti i presenti, e un augurio di buon lavoro.

GAETANO SILVESTRI

(Magnifico Rettore dell'Università degli Studi di Messina)

SALUTO DELL'UNIVERSITÀ DI MESSINA

Sono molto lieto di portare a questo Convegno il saluto dell'Università di Messina. Ho fatto di tutto per poter intervenire proprio nella consapevolezza che si tratta di un Incontro di studio di grande rilevanza, sia scientifica che pratica. Credo che il pregio di incontri del genere sia quello di non limitarsi a studiare i problemi da un punto di vista astratto, della tematica giuridica, come diceva poco fa il prof. Fanara, ma quello di vedere quale contributo il giurista può dare per la soluzione di problemi pratici.

Noi siamo tutti allievi di un grande Maestro della scuola giuridica messinese, il prof. Salvatore Pugliatti, il quale intitolò un suo famoso saggio "La giurisprudenza come scienza pratica", ossia la giurisprudenza come scienza che aiuta a risolvere i problemi pratici. Il problema del trasporto aereo, al quale un contributo possono darlo in primo luogo i navigazionisti, ma anche i giuristi di altra estrazione, è eminentemente pratico per la nostra Sicilia, nel senso che la sua collocazione geografica quasi baricentrica tra i Paesi del bacino del Mediterraneo e l'Europa del Centro/Nord rende assolutamente vitale la possibilità di collegamenti aerei veloci ed efficienti, non soltanto per l'economia, ma anche per la cultura.

Noi, che come studiosi siamo necessariamente dei pendolari perenni, sappiamo quanto lo stare in Sicilia sia a volte penalizzante, anche dal punto di vista della partecipazione ai processi di ricerca internazionale.

Questo non è un Convegno strettamente ed esclusivamente giuridico, ma si occupa anche dei problemi gestionali. Il tema del rinnovamento della normativa ha naturalmente aspetti di grande

importanza, pensiamo alla necessità di equilibrare la liberalizzazione (o *deregulation*) con il mantenimento di standard di sicurezza; pensiamo anche alla possibilità di offrire servizi che non siano, sul piano della qualità, troppo degradati in relazione alla concorrenza che si fa sulla base dei prezzi.

Tutte queste cose, che implicano la necessità di concepire un mercato libero, ma regolato in modo abbastanza rigoroso, sono un campo privilegiato di studio non solo per il giurista, ma anche per l'economista, che devono trovare un punto di incontro.

Credo che da questo Convegno verrà un contributo notevole all'avanzamento delle nostre conoscenze in questo campo. Io stesso, per quel poco che i miei impegni mi consentiranno di essere presente, mi ripropongo di apprendere dai Relatori, ma ancor più apprendereò dagli Atti che puntualmente il dinamicissimo prof. Fanara pubblicherà in tempi molto veloci, come ha fatto anche nelle altre occasioni.

Quindi auguri di buon lavoro, e speriamo che questa occasione di incontro di ricerca continui a ripetersi, come ormai è tradizione, ogni anno.

LUCIO BIANCO

(c.s)

Grazie, Magnifico Rettore. Adesso abbiamo due relazioni, ma prima di introdurre il primo relatore, Mr. Muschel, consentitemi di fare qualche considerazione su questo Seminario, anche se il mio ruolo è solo quello di presiedere e coordinare la sessione della prima giornata.

Una considerazione me l'ha suggerita la copertina del programma che in varie stesure il prof. Fanara ci ha inviato. Il titolo del Convegno è "*La nuova disciplina del trasporto aereo al servizio del turismo in Sicilia*". Poi, in realtà, nella prima pagina del programma non è rappresentata solo la Sicilia, ma tutta l'Europa, fino ai Paesi scandinavi. Questo sta, a mio avviso, a sottolineare la valenza sistemistica del trasporto aereo. Non si può parlare di trasporto aereo in un ambito regionale se non lo si vede interconnesso, almeno a livello europeo. Nel campo dei sistemi di trasporto aereo, bisogna ragionare in termini globali, in termini di interoperabilità, in termini di inter-connessione, di compatibilità dei sistemi. Questo è quello a cui si sta peraltro lavorando a livello europeo, perché sappiamo tutti che se c'è uno sciopero anche solo in una regione, questo si ripercuote in tutta Europa. Probabilmente il trasporto aereo è quello in cui la criticità della valenza sistemistica è maggiore.

La seconda considerazione che volevo fare riguarda la necessità di un approccio globale al trasporto aereo, di un approccio europeo, ma probabilmente anche mondiale. Il trasporto aereo è quello che subisce più innovazioni dal punto di vista tecnologico, che richiede capacità di gestire sistemi tecnologici complessi: pensiamo soltanto al sottosistema "controllo del traffico aereo". Le tecnologie, i sistemi di gestione, le professionalità necessarie, sono sicuramente maggiori di quelli che richiedono altri sistemi di trasporto. Da questo punto di vista, il ruolo della ricerca diventa fundamenta-

le. Rispetto a questo problema volevo dire che, proprio nell'ultima settimana di settembre, è stato organizzato un *workshop* mondiale, che si terrà a Capri, per capire qual è l'evoluzione nel campo del traffico aereo, quali sono le tecnologie che si sono affermate e che possono sostituire quelle più mature per aggiornare i sistemi.

Ma quella della ricerca nel campo dei trasporti è una necessità strutturale. Il nostro Paese non ha un sistema di ricerca permanente nel campo dei trasporti. I Progetti Finalizzati del CNR hanno sicuramente svolto un loro ruolo, hanno creato una comunità scientifica, ma non sono sufficienti. Non si può andare avanti per progetti di cui non è certa la continuità: bisogna disporre di una struttura di ricerca permanente, analoga a quella esistente in tutti gli altri Paesi. Siamo entrati in Europa, ma se vogliamo restarci, anche in questo campo abbiamo bisogno di avere sistemi che siano competitivi.

L'anno scorso parlavamo di una legge che destinava alla ricerca una certa percentuale dei finanziamenti per gli investimenti sui trasporti. Questa norma adesso è operativa perché è stata inserita in una legge dello Stato, collegata con la finanziaria. Noi ci auguriamo che la possibilità di utilizzare queste risorse finanziarie consentano di dar vita ad una struttura permanente stante il fatto che questa norma assicura un finanziamento permanente alla ricerca nel campo dei trasporti.

Un'ultima considerazione riguarda lo scenario del trasporto aereo in Europa. Io per la verità da un paio di anni non ho più seguito gli sviluppi del settore perché, ovviamente, la carica di Presidente del CNR mi assorbe in pieno. Ricordo però che fino a tre anni fa le previsioni dello sviluppo del traffico aereo in Europa erano tali che si prevedeva per il 2010 una saturazione della capacità del trasporto aereo; il che significa che, a fronte di questa saturazione, il *surplus* di domanda che non può essere soddisfatta dall'offerta di trasporto aereo pone problemi grossi, che devono essere risolti relativamente in pochi anni. Può darsi che le previsioni siano temporaneamente sfasate, può darsi che non sarà il 2010, ma resta il problema che c'è un *trend* di crescita della domanda di traffico aereo, che va al di là della capacità di trasporto. Allora bisogna ricorrere, da una parte, a nuove tecnologie di trasporto aeronautiche, anche

molto avveniristiche su cui ho qualche dubbio, ma che, probabilmente, diventeranno realtà nel giro di qualche decennio, dall'altra, bisogna porsi il problema della integrazione, della complementarità tra il trasporto aereo e la rete europea ad alta velocità ferroviaria, o comunque una rete ad alta velocità di trasporto guidato. Questo pone problemi non banali, di logistica, di organizzazione, di gestione, di accordi tra i vari Stati perché ovviamente i sistemi spesso non sono intercambiabili, e non esiste l'interoperabilità di cui parlavo prima.

Bisogna porsi questo problema subito perché, nell'arco di qualche decennio, ci troveremo di fronte ad una domanda di trasporto aereo che non potendo essere soddisfatta da questo tipo di trasporto, deve essere soddisfatta da altri modi. Evidentemente bisogna che questo problema venga affrontato in una logica di integrazione. Gli ingegneri ed i tecnologi si preoccupano, a ragione, perché è il loro mestiere, dei problemi di carattere scientifico-tecnologico, ma spesso dimenticano che la fattibilità tecnologica non è sufficiente; bisogna porsi anche i problemi di carattere giuridico-amministrativo, studiarli, approfondirli al fine di introdurre e impiegare queste nuove tecnologie.

Quindi mi sembra quanto mai opportuno che in una scuola come quella del CUST, che ovviamente si occupa di Diritto della Navigazione, si approfondiscano questi aspetti, questi profili giuridico-amministrativi del trasporto aereo.

Anch'io vorrei associarmi nel plauso al prof. Fanara per essere l'animatore e l'organizzatore di questi dibattiti e di questi convegni che sono sempre molto centrati, su temi "caldi". L'anno scorso si è parlato di trasporto ferroviario: era un tema attualissimo. Quest'anno si parla di trasporto aereo, tema oggi di estremo interesse.

Chiudo queste mie brevi considerazioni e dò la parola al primo relatore, Mr. Muschel, della Commissione Europea.

RELAZIONI

LAURENT MUSCHEL*

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THE EU AIR TRANSPORT POLICY: REALISATIONS AND PERSPECTIVES

Introduction.

Over the past 10 years, air transport has been one of the most dynamic economic sectors in the European Community. At the same time, it has undergone important structural changes. Part of these changes derives from the progressive liberalisation process which took place in Europe during this period.

In the Community's approach, regulation and liberalisation are not contradictory terms. An appropriate regulatory framework has been indeed required for the liberalisation to produce the desired results and to ensure fair competition. That is why the first task of the Commission has been to regulate the market at Community level in order to achieve a progressive and sound liberalisation.

PART I: REALISATIONS SO FAR

A/ The Regulatory Framework

I - The third package.

The liberalisation involved the adoption of three successive regulatory packages between 1987 and 1993. These packages pro-

* All views expressed in this paper are purely personal and do not commit the European Commission.

gressively abolished essential restrictions on the commercial freedom of air carriers.

The third package essentially consists of three regulations concerning respectively the licensing of the carriers, access to community air routes and fare freedom on these routes. These regulations clearly form a whole and can be considered as the essential foundations of the liberalised European air transport market.

1. *The licensing Regulation (Regulation (EEC) 2407/92).*

The definition of licensing requirements at a Community level applicable in all Member States results in the existence of a single Community licence for the operation of air transport activities. This licence can be issued by any Member State in accordance with the freedom of establishment recognised by the Treaty of Rome to all nationals of the Member States. Any carrier holding such a licence is no longer considered as a national carrier but as a Community carrier.

By setting out detailed requirements resulting in sound economic and safety levels, the licensing regulation is an essential element of the European regulatory framework. These uniform requirements ensure that all carriers are submitted to the same operating rules in all the Member States. Equality of treatment is therefore ensured. In addition, the qualification of these carriers as Community carriers resulting from the ownership and control requirements laid down by the licensing regulation is a prerequisite to benefit from the rights provided for in the market access regulation.

2. *The market access regulation (Regulation (EEC) 2408/92).*

Freedom of access to European air routes is exclusively recognised for Community carriers. The regulation provides for a complete freedom of access (including the so called cabotage - unrestricted access to domestic routes of one Member States by all Community carriers) from 1 April 1997. It also provides for limited

safeguard clauses allowing Member States to interfere with the free access principle for objective reasons.

The possibility for Member States to impose public service obligations on certain routes is the most important safeguard mechanism of the market access regulation (Article 4). Public service obligations can be imposed on routes serving a peripheral or a development area or on thin routes to a regional airport. They are aimed at taking into account regional development priorities of the Member States by ensuring the existence of an adequate level of service whenever market forces are failing to do so.

The regulation provides for a two step procedure. In the first phase, Member States can impose public service obligations by way of a notice published in the Official Journal of the European Communities. The obligations imposed generally concern capacity, frequencies and pricing. Once these obligations are published, access to the route remains open to any carrier respecting the obligations. In the second phase, if no carrier is willing to operate the route, the Member State concerned can decide to restrict access to one carrier and give it a financial compensation for meeting these obligations. The carrier can only be selected by an open call for tender to which all Community carriers can participate. The financial compensation must be calculated on the basis of the actual costs and revenues incurred by the service.

Article 4 therefore reconciles the requirements of a competitive framework based on free market access with the national policies aimed at ensuring sustainable and balanced development. To date, public service obligations have been imposed on about 100 routes in the European Community. Nevertheless, the use of this provision has been limited to five States, thus illustrating differences in transport policies amongst the members of the Community.

Another important safeguard clause is the possibility for the Member States to regulate the distribution of traffic between airports of an airport system and the possibility to take operational measures designed to protect the environment (Article 8). This clause was applied by France in order to distribute traffic within the

airport system of Paris and gave rise to Commission decisions aimed at ensuring their compatibility with Article 8. On this occasion, the Commission stated that any of the safeguard clauses of the market access regulation must be interpreted strictly and must not interfere with the effectiveness of the freedom to provide services. In this framework, it is necessary not only to prohibit any discrimination on the grounds of nationality but also any discrimination on the grounds of identity of the carriers. Therefore, the measures adopted must be transparent, objective and constant over a certain period.

Additional safeguard clauses provided for in the market access regulation include the limited possibilities for Member States to refuse access to a second carrier on routes between two regional airports when a carrier licensed by it already operates the route (Article 6) and the possibility for Member States to impose conditions, limit or refuse traffic rights when serious congestion or environmental problems exist, in particular when other modes of transport can provide satisfactory levels of service (Article 9).

3. *The fare Regulation (Regulation (EEC) 2409/92).*

Free access of Community carriers to Community air routes would have been incomplete without the freedom to set their fares. Hence, Member States are no longer allowed to require prior authorisation but only the filing of such fares at least 24 hours before they become effective.

The regulation contains safeguard clauses which allow, under certain conditions, the intervention of the Member States and the Commission in order to withdraw excessively high fares or to stop further fare decreases in case of sustained downward development of air fares - "downward spirals".

So far, neither the Member States nor the Commission have made any use of their respective powers under those safeguard clauses.

II - Complementary legislation.

1. *Complementary legislation on market access.*

The **slot** allocation rules (see separate presentation).

The computer reservation systems (**CRSs**) installed in travel agents' offices are the principal tool for the distribution of airline services. Over 70% of all bookings are made through CRSs. However they also have the power to distort competition if their owners, the major airlines, are allowed to influence the way flights are displayed. For this reason Regulation 2299/89 established a code of conduct for CRSs. The code lays down the rules for the non-discriminatory operation of CRSs. It places a special emphasis on the need for CRSs to treat owner carriers and other participating carriers on an equal basis.

As stressed often by airlines, there was also a need for a complement to the liberalisation measures on the airport side. The vehicle for working towards improvements on the airport side is the 1996 Directive on access to the markets for **groundhandling** services at Community airports (96/67). It provides for a balanced and progressive liberalisation. As part of a political compromise, the Directive allows for delaying - by means of granting a derogation - the liberalisation process in this field if objective capacity and space constraints make it impossible to open-up markets. However, the Commission makes a very thorough scrutiny of derogation requests and is very determined not to water down the scope of the liberalisation measures by taking a relaxed stance on calls for derogations.

Still on the airport side, the Commission put forward a proposal for a Directive on **airport charges**. The objective of this Directive is to establish as European law three basic principles: cost-relatedness, transparency and non-discrimination. This proposal is still pending before the Council, given the opposition of some Member States.

2. Supporting legislation for the safety, the protection of environment and of the consumers.

The **safety** issue is also high on the agenda of the Commission. In the early 90s, the Council decided that economic liberalisation had to be accompanied by the strengthening of a number of other regulatory tools so as to ensure both fair competition in the market and the protection of the travelling public, in particular its safety.

To do so, rather than reinventing the wheel and trying to develop its own proposals, the Commission decided to rely on the expertise of Member States and of their common organisation, the JAA, to build the set of common safety rules required for the Community.

Therefore, the Community adopted in December 1991 Regulation 3922/91 on the harmonisation of technical rules and administrative procedures in the field of aviation which, while establishing Community competence in this field, gives indeed a significant influence to the Member States in the rule-making process.

In parallel, the Commission had already undertaken a number of initiatives with the view to improving aviation safety. They range from research projects in the field of aircraft design and manufacturing, to studies related to the treatment of information drawn from accidents and incidents investigation, so as to avoid their recurrence and, if possible, prevent them from happening. In this last domain, this led to the adoption in 1994 of a Directive on accident investigation, making such investigations mandatory and describing the conditions for ensuring that they will be conducted in a neutral and independent way, and produce effectively usable safety conclusions. The Commission also adopted a proposal for a Directive establishing a safety assessment of foreign aircraft, but this text is still on the table of the Council.

Community **environmental policy**, in particular noise pollution deriving from air traffic is also an area for Community ruling. Directive 92/14 provides that from 1st April 2002 onwards, chapter II aircraft shall not be operated in the Community. Aircraft regis-

tered in developing countries and listed in the Annex to the Directive are exempt from this prohibition. Moreover, Member States can derogate from this rule in order to allow carriers to renew their fleet or for aircraft which are not used for commercial purposes.

Regarding the **protection of consumers** in the air transport sector, it is mainly focused on addressing the problems caused by overbooking and on updating liability rules applied to carriers.

Regulation (EEC) 295/91 established common rules for a **denied boarding compensation** system in scheduled air transport. The Regulation provides that a passenger who is denied boarding on an overbooked scheduled flight departing from a Community airport shall be immediately entitled to financial compensation and other benefits when he holds a valid ticket and a confirmed reservation for that flight. The Commission adopted in 1998 a proposal amending the existing Regulation. This proposal aims at improving the rights of passengers who are denied boarding on overbooked flights by, in particular, improving information for passengers in displaying a notice at check-in counters and raising the compensation thresholds. The proposal is still on the table of the Council and Parliament.

Regulation 2027/97 set a new **air carrier liability** regime in the event of accidents going beyond the old Warsaw system. This Regulation will be amended following the positive results of the ICAO Diplomatic Conference of May 1999 on the new Convention replacing the “Warsaw system”. The Community will become a contracting party to this new Convention.

Finally, the Commission should adopt a general Communication on the passengers’ rights by the end of the year.

III - The development of an air transport competition policy.

1. *The control of State aids.*

The importance of State aid control was crucial during the years of liberalisation. During this period (1990-1997), carriers have undertaken a major restructuring effort. Such restructuring was necessary in order to overcome the most severe economic crisis ever experienced in this sector and to adapt to the new regulatory environment.

The approach of the European Commission was the following: to ensure the conditions for fair and equitable competition whilst accepting that some airlines carrying the financial burden of the past should have the chance for a fresh start within the framework of a reorganisation programme, provided that this does not adversely affect the situation of competitors. When State aids have been authorised, it was to finance the implementation of sound restructuring plans aimed at returning loss making State owned airlines to viability.

The authorisation of State aid given by the Commission has been made subject to the compliance with strict conditions which aim at:

- ensuring that the airline concerned is viable within a reasonable period;
- restricting the distortion of competition caused by the aid;
- making the aid transparent and monitoring the case.

In addition, it has been made quite clear that the aid received is the last one under the “one time last time” principle, except for exceptional, unforeseeable and external circumstances.

Furthermore, the Commission always made sure that a strict monitoring procedure is implemented afterwards and it carefully monitored the correct implementation of the restructuring plans and of the compliance with the conditions laid down in the decision authorising the aid.

Restructuring plans linked to the State aid were, in most cases fruitful. Privatisation of some of the airlines which received aid is

happening. This was unthinkable before the injection of public capital.

European carriers now have only themselves to rely on in the marketplace, and can expect the Commission to be very strict in assessing further aid. We can consider today, that the State aid era in Europe belongs to the past.

2. The control of agreements, abuse of dominant positions and concentrations.

The number of alliances and partnerships entered into by Community carriers has constantly increased since 1993. Though the majority of these alliances do not involve financial involvement, the biggest carriers have acquired subsidiaries in their home market or holdings in other European and even non European carriers.

The Commission has been particularly attentive to the possible competition implications of this consolidation of the industry. Starting in July 1996, the Commission has opened investigations into four transatlantic airline alliance agreements: British Airways / American Airlines, Lufthansa / SAS / United Airlines, KLM / Northwest, and Delta Air Lines / Swissair / Sabena / Austrian Airlines. No decisions have yet been taken in any of these four cases but next months shall see decisive developments.

The only alliance case which has been decided so far, the SAS / Lufthansa case, involved the creation by the two airlines of a joint venture on routes between Germany and Scandinavia, as well as extended co-operation in many areas on other routes. The alliance was granted an exemption, taking into consideration that its benefits to consumers outweighed its negative effects on competition; however, a number of conditions were imposed on the granting of antitrust immunity: more specifically, on the possibility of interline agreements and participation in the partners' Frequent Flyer Programmes for new entrants, the obligation for the partners to make available at their congested hubs a sufficient number of

slots to competitors, the termination of certain co-operation agreements with other airlines, and frequency freezes on certain routes for a certain time period.

This approach of allowing the alliance to proceed, with however a number of conditions imposed on it, demonstrates that the Community takes a favourable view on the consolidation in the market, but only as long as potential competition can be maintained, that is as long as new entrant carriers can effectively enter the market.

B/ Assessment of the realisations so far

To assess the impact of the air transport liberalisation measures, we have to compare the present situation with the one prevailing before the Community intervened. At that time, the Community was fragmented into a number of separate national markets with characteristics we still find in international aviation today. That is a different regime for domestic and for international carriage; a sharp distinction between scheduled and non-scheduled services; with capacity and fare controls that prevented carriers from adjusting to changes in market demand.

In a nutshell, carriers could not operate according to commercial opportunities, there was no fair competition among European carriers and many airlines were inefficiently run. As a result, consumers were suffering from little choice, inadequate services and high fares.

The Community achieved a lot over the last ten years by converting this fragmented market into a single market where Community carriers can operate freely. In ten-year time, there was a real shift of powers from the Member States to the European Community institutions to the benefit of the consumers. This is really one of the big success stories of the construction of the European Community.

The European liberalisation is a unique example of a smooth integration of various air transport markets. Unlike in the United

States, the European liberalisation has not resulted in a “big bang”. There have been no dramatic disappearance of important carriers and no substantial penetration of domestic markets by foreign airlines. Nevertheless, the beneficial effects of the liberalisation have become gradually more evident:

Since 1993, the number of available scheduled Community carriers has risen by 25%, the number of Community cross-border routes flown has increased by 35%, and – depending on the type of fare reductions in ticket – prices for consumers range between 10% and 24% (see Annex for more detail).

Employment during the years of implementation of the liberalisation measures, far from being undermined, has actually increased. Between 1988-1996 the overall number of employees in civil aviation increased from 435,400 to 489,700. Although the trend is not homogeneous across time, EU Member States and the industry, the overall outlook for employment in the sector is still positive.

However, everything is not perfect! The increase in the number of carriers on intra-Community routes is not always sufficient to create real competition. The impact of the liberalisation process on air fares has not been seen everywhere. Furthermore, if we have seen an explosion in the number of cheap fares being offered in the market, with nearly 90% of air travellers currently travelling at reduced fares, the effect of liberalisation on the business fares has been less evident. Market transparency needs also to be reinforced with the proliferation of tariffs, code-share arrangements, FFPs and so on. Delays are also, on average, increasing and the congestion of the main airports is a threat for the future growth of air transport. Finally, a full restructuring of the airline industry is also hampered by the lack of an effective and pro-active external strategy.

There is therefore still a series of challenges before us.

PART II: CHALLENGES FOR THE FUTURE: GROWTH AND GLOBALISATION

A/ Growth in air transport

The very substantial growth in air transport is increasingly creating problems. With an annual growth rate of more than 7%, much of runway and terminal capacity, but also of ATC capacity is clearly under constraint and delays have become a common feature in Europe. In other words, the Regulator has to intervene again since liberalisation is victim of its own success.

As a result of the increasing congestion at some of the major Community airports, the issue of **slot allocation** is quickly becoming one of the most sensitive topic. Freedom to operate anywhere within the EU has no meaning if the airlines cannot get the slots to operate the routes (see presentation on slot allocation).

Capacity problems have also been at the basis of the Commission proposals for reforming and strengthening the **Air Traffic Management** system. The sharp increase in congestion and delays showed clearly the need for an increase in the capacity and the efficiency of the European Airspace. The Commission adopted in March 1996 a White Paper on Air Traffic Management which proposes a significant shake-up of the institutional framework for this activity. The new Eurocontrol Convention is certainly a step forward but more needs to be done.

Last but not least, the consequences in terms of **environment and safety** of the air traffic growth have to be taken into account. The integration of environmental considerations has become one of the main challenge for the European civil aviation policy. Aircraft noise around airports will clearly set the limits for future growth of air transport activities. With the continued growth and the location of the main airports close to large urban centers, it is becoming more and more difficult to get political support for the required expansion of airport capacity. Moreover, an increasing number of local authorities are imposing restrictions on day-to-day operations of airports.

This is the background for the adoption of the **hushkit** Regulation, which was adopted on the 29th of April 1999. The hushkit Regulation has, in fact, a very limited objective. It is a safeguard measure in order to prevent the addition of noisy aircraft in the Community which should have normally been phased-out.

It is the consequence of the lack of progress in ICAO for more stringent noise standards. But, it is also the consequence of the unilateral US initiative, in 1990, to anticipate by two years the phasing out of chapter 2 aircraft.

The result was that, in the United States techniques were developed to prolong the life of old aircraft that should normally have been retired according to the ICAO requirements. Europe expected indeed that, on the basis of the ICAO rules, these old and noisy aircraft would no longer fly after 2002.

Irrespective of this historical background, the US administration has been very active in its opposition to the Regulation. Considering that it would impact negatively the US industry and would threaten the ICAO process, the US administration asked for the non-adoption of the Regulation while Congress prepared a bill to ban Concorde.

Following several discussions with the Americans and in order to avoid a trade conflict, it was finally decided, in adopting the Regulation, to postpone its date of application by one year. This 12-month period should allow the continuation of the consultations with the United States.

This postponement was rendered possible by the new commitment of the United States to speed up the process in ICAO and by its willingness to work jointly with Europe on an accelerated programme for a new noise standard. The Commission strongly welcomes such a step forward and the prospect of intensive cooperation with the US. However, as it stands, the ICAO process will only bring benefits in the very long-term. That is why we consider that, in addition to a new ICAO standard, it is necessary to answer the immediate noise problems and thus develop rapid phase-out measures of the noisiest aircraft falling within the Chapter 3 category.

Over the next few months there will be intensive and maybe tensed discussions between the US authorities and the Commission on these matters.

To strike the right balance in the environmental field and to get an agreement at international level is not easy. In order to stimulate the debate, the Commission intends to adopt still this year a Communication on air transport and environment. The main objective of this Communication will be to look into the different instruments which could contribute to ensuring a better balance between the need for additional airport infrastructure and the legitimate expectations of people living around airports not to have a further deterioration of their quality of life.

Regarding air safety, the Commission has recently proposed to establish an **European Air Safety Authority**. For some time now, there had been indeed a growing understanding that an effective central body for aviation safety is needed to maintain a high level of safety and to enhance the efficiency of regulatory and certification activities. The approach proposed by the Commission is to create this new authority on the basis of the Joint Aviation Authorities. This European Air Safety Authority should be able to adopt safety rules and to check the conformity of products, organization and personnel with these rules.

B/ Globalisation: towards a sound Common external policy

The second challenge for the regulatory authorities is to take the appropriate measures in a market which has become global.

Sometimes, the Commission is considered to be on a crusade to strengthen its bureaucratic competence. This is totally wrong. If the Commission is looking for a common policy on external aviation, it is not for the sake of its own glory but because we are convinced that it is in the interest of the European aviation industry.

The Globalisation of economic activities is to be seen everywhere and these tendencies are increasingly present in the airline industry. However, aviation is still not a normal economic activity and

the restructuring and consolidation of the airline business is still hampered by regulatory barriers. Irrespective of the full liberalisation of the European air transport market, the standard bilateral agreements, including the open skies agreements, still benefit only the air carriers majority owned by nationals of the countries concerned. This is still the case outside the Community and therefore it impacts the aviation relations between Member States and third countries. In practice, Virgin Express, a British-owned company located in Belgium can only fly from Brussels to other Community destinations but not to the rest of the world.

The economic consequence is that European airlines do not fully benefit from the single European aviation market. While each US airline can have several international hubs in places as far apart as Chicago, Dallas or Miami, European airlines can only develop their international strategy from their limited home base. The **nationality clauses** in the bilateral agreements also prevent Community carriers from taking over or merging with other European carriers. For instance, a British carrier would not consider taking over a major Portuguese airline because it would mean that the Portuguese carrier would lose its portfolio of traffic rights to and from countries outside the Community. These nationality clauses therefore maintain the fragmentation of the internal market and prevent a sound and efficient restructuring of the industry.

A common external policy would mean that we move away from nationality clauses to a Community clause; or in other words that we move away from bilateral negotiations to Community negotiations. It would offer European airlines a very strong basis for the development of their world-wide strategy. Unfortunately, Member States are still refusing to give the Community the necessary authorisations to negotiate bilateral agreements. I am convinced that the attitude of national authorities, be it motivated by a willingness to keep competence or by a lack of vision, goes against the interests of our industry.

The objective of the European Commission is clear. It is to put an end to the bilateral restrictions and allow European airlines to merge, to restructure, to get a critical size in order to compete

efficiently on a world-wide basis. Air carriers should be left with a maximum of operational freedom. This is the policy we have gradually implemented in the Community with the three packages of liberalisation. This is also the policy we would like to see implemented at a global level. In concrete terms, this means that European airlines should be able to fly without restrictions from any airport in the Community to any airport in a third country. Of course, this is a long-term objective which can only be reached gradually through negotiations in different bilateral or multilateral contexts, but I am certain that at the end of the day it will succeed, for the benefits, above all of the air transport users.

In negotiating a Common Aviation Area with Central European Countries and in trying to negotiate with the United States, the Commission is pursuing this goal.

Our negotiations with **Central Europe** are proceeding on the basis of a clear and comprehensive mandate from the Transport Ministers' Council. And I am certain that the results will, amongst other things, demonstrate the benefits of a united action. Let me say that it was far easier for the Member States to accept that the Commission negotiates with these countries since all of them should in any case join the EU at the end of the day. However, the objective of these negotiations should not be underestimated. These negotiations should lead to the creation of the largest open aviation area in the world including the 15 MS of the EU, Norway, Iceland and ten Central and Eastern European Countries (that is Bulgaria, the Czech Republic, Hungary, Poland, Romania, Slovakia, Slovenia and the 3 Baltic States). At the end of transition periods which we are currently negotiating with each Central European State, any carrier of these countries will be free to operate in the area, including for cabotage operations, without any pricing or capacity restrictions. The transitions being negotiated are very short. We are talking of a full open market regime between 2000 and 2004 depending on the situation of the different countries. This is far in advance compared to the likely accession date into the Community for most of the countries.

The agreement we are negotiating is also unique in its structure. It is a multilateral agreement with ten additional protocols defining

the transitions for each CEC for the full market access. The transitions are made conditional upon the progress achieved by each country in terms of adoption of the EU Aviation Rules.

To move to the final phase, each CEC will have to pass a review showing, in particular, that its airlines achieve a high level of safety and that it is fulfilling the conditions for becoming a full member of the JAA or of the future EASA, if it exists by that time. If the assessment is not positive, the transitional period will be extended with a precise programme to remedy the remaining deficiencies. These transitions are also adapted to the specific economic situation of the different airlines since our objective is to ensure a sound restructuring of their aviation industry and to avoid disruptive developments. This is therefore a unique and gradual approach which will extend the EU model of liberalisation to former communist European States.

We hope that the development of an aviation market without barriers subject to the same rules and covering a population of more than 450 million inhabitants will create new possibilities for economies of scale and for the development of integrated networks. There is a huge potential for air traffic growth in these countries. Today, the airports of the EU handle more than twice as many passengers as the total population living in the Union. By contrast, airports located in Central Europe handle in general only a number of passengers corresponding to about 15% of their population. There is therefore a very large potential for airlines to exploit.

The creation of a Common Aviation Area is indeed also our objective for our relations with **the United States**. Of course, the degree of integration would be quite different with the United States but the level of market opening could be the same.

You may consider that our action against the open skies agreements is not consistent with our declared market opening objective. You may well ask, why the Commission is attacking the US open skies policy? Well, we do not attack the US approach. The problem is not with the United States, but with the lack of resolve on the part of Member States to fulfil their duty under the Treaty.

If we are bringing today the open skies agreements signed by Member States before the ECJ, it is not because we want to close our market. This is because we believe that the fragmented approach of EU Member States towards the US is placing European business at a disadvantage and undermining the non-discriminatory operation of the Single Market. It is because we want to develop a genuine open market regime going beyond the open skies agreements.

The United States is now reflecting on how to go beyond the open skies agreements and is organising in Chicago a big conference on this matter at the end of the year. This is good news. To go beyond open skies is what we have been calling for over the last five years. And that is indeed why we have **put forward the idea of a Transatlantic Common Aviation Area**.

Such a Common Aviation Area would not simply comprise the standard exchange of traffic rights.

It would go beyond the open skies in many ways.

First of all, we should develop a real co-operation between the regulatory authorities involved. The alliance cases are clear examples that demonstrate the need for a strong co-operation between the different competition authorities.

More generally, the need to comply with several sets of rules imposes substantial additional costs and uncertainties on airlines. We must therefore reinforce the consistency between the policies applied by the different authorities.

A common approach in such areas as leasing, computer reservation systems or code sharing would certainly facilitate the operations of carriers in the respective markets and ultimately work to the benefit of airline users. The relaxation of the ownership and control rules would be, of course, a key element in this new approach.

We also need to ensure convergence on a number of other policies. I am not saying that we need to have the same policies on all issues with the United States but that we should have some convergence wherever there is an added-value. I am thinking here of:

a) establishing comparable, high safety standards for all carriers;

- b) Establishing efficient but also reasonable security measures and I am not referring here to the Hatch amendment...;
- c) Establishing equivalent consumer protection measures;
- d) Co-ordinating and, where possible, converging on advanced measures to protect the environment.

The United States and Europe should develop this new type of aviation arrangements going beyond the open skies agreements.

At the end of the process, WTO, or perhaps even ICAO, could try to develop a new global framework based on the EU-US experience.

In our efforts to have a regulatory structure which is better adapted to the needs of a global civil aviation, we would welcome indeed any progressive multilateral initiative.

In particular, we would welcome progress in the context of the coming new round of **GATS negotiations**, which will start at beginning of next year.

As you are aware, the Uruguay Round did not achieve much for air transport. CRS, selling/marketing and aircraft maintenance were included under the GATS. But the effect of this inclusion was severely limited in practical terms because only a limited number of WTO Members made specific commitments on these issues, and even if they did, they still maintained a number of reservations.

De facto, air transport is practically not covered by the GATS.

Personally, I would favour a full inclusion of aviation under the GATS. This would be the most radical approach but it would put an end to this common behaviour among some aviation people to consider the sector as something apart. I do feel that the traditional argument against the inclusion of air transport is not convincing. It is argued that the MFN clause would have a major unbalanced impact for the most open countries. But let me stress that it worked in other sectors. Why couldn't we do the same as for telecom or financial services? Moreover, we could build a type of reciprocity mechanism under the GATS umbrella. With imaginative thinking, we could easily put an end to the current restrictive bilateral system. But, of course, bilateral negotiators may be afraid that aviation would be

taken over by trade officials in the overall WTO context. Here again, a conservative approach is likely to prevail. Unless the aviation industry as a whole put pressure on national governments to achieve something worthwhile, the next round of negotiations is likely to achieve little for aviation.

The Commission is currently organising internal discussions with the industry and the Member States to define a Community position.

Air cargo is one of the options. It has the advantage of being less politicised than passenger air transport. Today, Air cargo is also part of the global logistical chain. It is not so much an air transport activity but rather a logistical activity where shippers and producers decide what mode or combination of modes suits their needs. We therefore believe that air cargo is a good candidate. But it is not the only envisaged option: we are also discussing with our Member States the possibilities of including groundhandling and leasing. If we manage to be even more ambitious, ownership and control as well as air transit could well be put on the negotiating table. This new round is a unique opportunity, probably for the next 20 years, to try to bring in line the regulatory framework with the requirements of the industry. We should not miss this opportunity.

Conclusion.

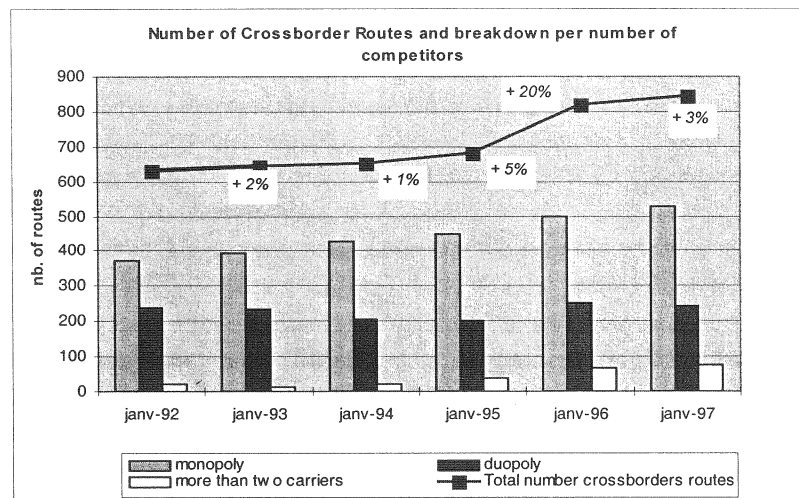
There are a lot of tasks ahead and the success of aviation will depend to a large extent on the way regulators work together to ensure that the legal framework stimulates the industry and matches the needs of the consumers.

ANNEX

(from the Commission Communication on The European Airline Industry: from Single Market to World-wide Challenges, May 1999)

The development of competition at route level

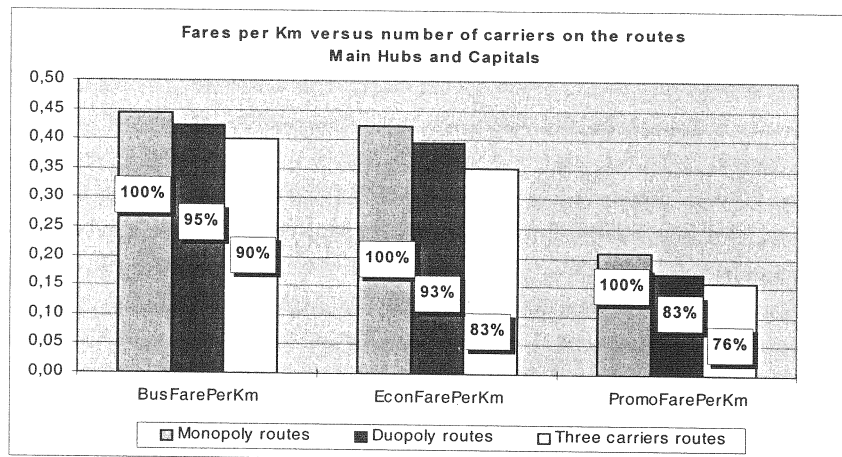
Figure 1



Evolution of airfares

It clearly appears that fares are narrowly correlated to distance but also to the degree of competition by single route, as the following tables show.

Figure 2



This table (average of the fares on all Community routes, values expressed in EURO on January 1997) shows that competition has a real impact on the price travellers pay for air transport. In particular:

- the level of fares decreases when the market structure passes from monopoly¹ towards duopoly or routes with more than two carriers. Consumers enjoy fare reductions in a range of 10% to 24%, depending on the type of fare;
- fully flexible business and economy fares are in the same order of magnitude, while promotional fares are half as high.

¹ Monopoly at route level should not necessarily be interpreted as a failure of liberalisation. It may well be that on some newly operated routes the volume of traffic is too thin to support more than one carrier. Still liberalisation is successful, in that it allows airlines to create new markets for air transport.

Figures 3 and 4 (see pp. 39-40) compare fares on some major routes, namely average fares from 20 capitals and main hubs. It is clear from figure 4 that fares per Km depend on the distance flown. However, even taking into consideration distance, there are large differences across the European Union. In particular fares are higher from airports such as Vienna, Frankfurt, Paris CDG, Brussels, Copenhagen and Stockholm. There may be several factors explaining this situation, such as local cost levels, the degree of competition, congestion and local market conditions.

Figure 3

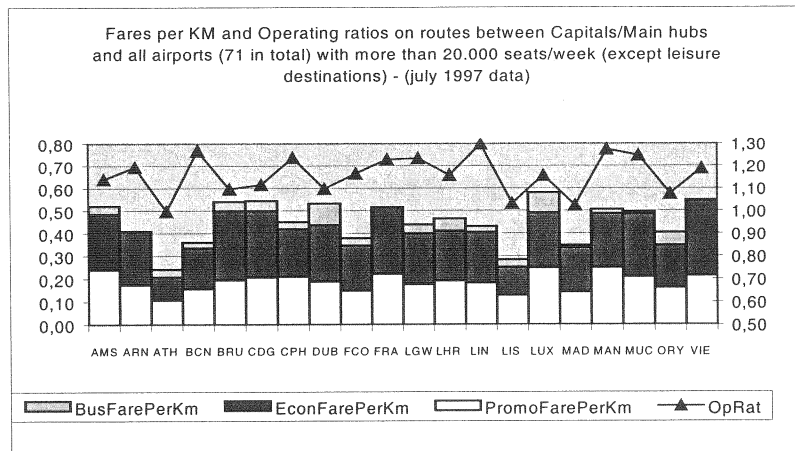
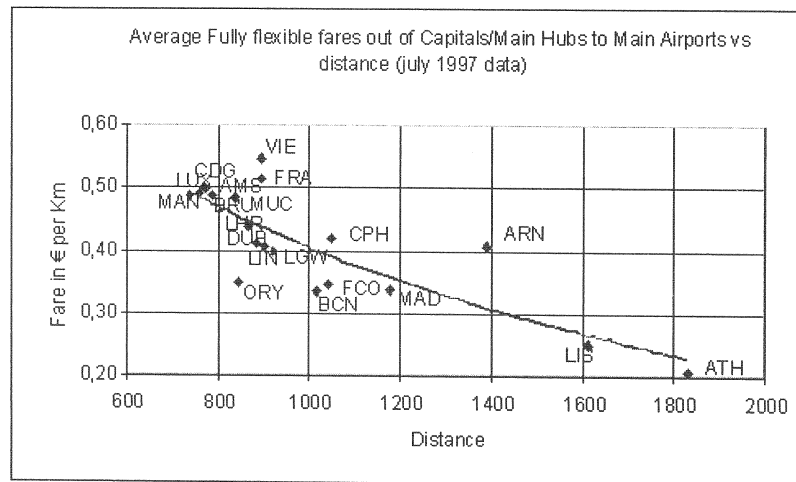


Figure 4



LUCIO BIANCO

(c.s.)

Ringrazio Mr. Muschel per la sua brillante relazione, che ci ha permesso di cogliere in pieno la complessità della problematica.

La parola va adesso al prof. Francesco Munari, che terrà una relazione sulla prassi comunitaria in tema di libera prestazione dei servizi nel settore dei traffici aerei.